

REMARKS

This Response is submitted in reply to the Office Action mailed on August 6, 2007. The Office Action is, in part, a restriction requirement. In this regard, restriction between seven alleged groups of invention is required. Applicants elect, without traverse, Group I (Claims 1-8, 12-14, 20, and 21). Applicants reserve the right to file divisional applications to the non-elected claims.

In addition, the Patent Office allegedly proposes an election of species requirement. The Patent Office states, with respect to the alleged species:

The species are as follows:

The many different materials in claims 1-3, 9, 10, and 18-20.
The many different bioactive components in claims 4, 11, and 14-17.
The many different flavonoids in claim 5.
The many different carotenoids in claim 6.
The many different forms in claims 8, and 13.

There is no indication in the Office Action what any of the “different” components are and which are patentably distinct. Nor is there an indication as to which claims are generic.

Applicants respectfully submit that this alleged election of species requirement is improper and cannot be responded to. Therefore, Applicants respectfully request that it be withdrawn or a proper election of species requirement be presented.

In this regard, the Patent Office’s attention is directed to the MPEP, and specifically Section 806. As set forth therein “Claims themselves are never species.” MPEP Section 806.04(e). In the present election of species requirement, the Patent Office does not identify the different species but rather refers to the claims themselves. Indeed, two election of species requirements refer to a plethora of claims.

Moreover, in making an election of species requirement, the Patent Office needs to determine whether or not the species are independent and patentable over each other. “The Examiner should group together species considered clearly unpatentable over each other.” See MPEP Section 806.04(h).

Therefore, Applicants respectfully request that the Patent Office, to the extent it believes an election of species requirement is proper and necessary, which Applicants do not believe is

the case, comply with the MPEP and specifically set forth the different species as well as indicate what the Patent Office believes are the generic claims.

The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 02-1818.

Respectfully submitted,

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Dated: August 27, 2007